

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

PAULA S. SAWYER, Acting Regional  
Director of the Fourteenth Region of  
the National Labor Relations Board,  
for and on behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner,

vs.

NOAH'S ARK PROCESSORS, LLC  
d/b/a WR RESERVE,

Respondent.

4:19-CV-3016

ORDER

This matter comes before the Court on further hearing pursuant to the Court's Memorandum and Order of Contempt ([filing 36](#)) entered October 17, 2019. As explained in that order, the Court found Noah's Ark to be in contempt of the Court's Memorandum and Order ([filing 21](#)) of May 10 awarding the Board injunctive relief. The issues for further hearing were the appropriate sanction and purge plan for Noah's Ark's contempt. See [filing 36 at 15](#).

Having heard from the parties and reviewed the record, the Court will order the following coercive contempt sanctions in order to ensure Noah's Ark's compliance with the Court's injunctive order:

1. A compliance fine of \$10,000 is imposed on Noah's Ark, in addition to a daily compliance fine of \$500 for each day that Noah's Ark is in violation of the specific provisions of the Court's purge plan, set forth below. Those fines shall be calculated on a daily basis from the specific deadlines for compliance set forth below, and shall be separate and cumulative for each violation.

2. These compliance fines are suspended so long as Noah's Ark complies with the Court's purge plan.
3. Should Noah's Ark fail to materially comply with the purge plan, the Court will, on the Board's motion, rescind the suspension and impose the accrued compliance fines on Noah's Ark.
4. Compensatory damages for Noah's Ark's contempt will be awarded, in an amount to be determined on subsequent motion by the Board.<sup>1</sup> The Board shall file its motion on or before November 18, 2019. Noah's Ark may respond to the Board's motion on or before December 2, 2019.

In order to purge itself of contempt and avoid the Court's compliance fines, Noah's Ark must comply with the following purge plan:

1. Noah's Ark shall comply with all the terms of the Court's May 10, 2019 order ([filing 21](#)).
2. On or before Wednesday, November 6, 2019, Noah's Ark shall at the Union's request immediately rescind all unilateral changes to the terms and conditions of employment for the bargaining unit employees that were implemented pursuant to Noah's Ark's January 2019 "Best and Final Proposal." That shall include permitting the Union access to the plant floor, employee cafeteria, and Union bulletin board that is not disruptive to plant operations, in accordance with past practice, and rescinding at the Union's request any other

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<sup>1</sup> Whether damages may be awarded to the Union as part of that compensation remains disputed. See [filing 36 at 14 n.5](#). The parties may set forth their respective positions on that matter—and *legal authority supporting that position*—in briefing the Board's motion.

unlawful unilateral changes covered by the Court's May 10, 2019 order ([filing 21](#)), but shall not include revoking any wage increases.

3. On or before Wednesday, November 6, 2019, Noah's Ark shall disband the "ad hoc" committee that employees were told they could bring their concerns to in lieu of the Union—specifically, the "employee committee" described in the Court's contempt order, [filing 36 at 6](#), and found to be contemptuous anti-Union activity, [filing 36 at 10-11](#).
4. Noah's Ark shall bargain in good faith with the Union and shall send a representative with bargaining authority to negotiation sessions with the Union. Specifically, Noah's Ark may purge itself of contempt for its failure to bargain in good faith by taking the following steps:
  - a. On or before November 10, 2019, Noah's Ark shall provide the Union and the Acting Regional Director of Region 14 at least 4 dates during November 2019, 8 dates during December 2019, and 8 dates during January 2020 on which Noah's Ark's representatives are available to bargain for no less than 6 hours on each date, so that the parties can bargain for a minimum of 24 hours per calendar month, until the parties reach a complete collective-bargaining agreement or a good-faith impasse.
  - b. In the event that the parties have not reached a complete collective-bargaining agreement or good-faith impasse by the end of December 2019, then on or before January 10, 2020, Noah's Ark shall provide the Union and the Acting Regional Director of Region 14 with at least 8 dates during February 2020, 8 dates during March 2020, and 8 dates during April 2020, on which Noah's Ark's representatives are available to bargain for no less than 6 hours on each date.

- c. Noah's Ark shall continue to provide the Union and Acting Regional Director of Region 14 available dates for bargaining in 3-month increments, as in subparagraph b of this section, until the parties execute a collective-bargaining agreement or reach a good-faith impasse.
  - d. Within 5 days of each bargaining session, or the first business day thereafter if the fifth day falls on a weekend or a holiday, Noah's Ark shall provide the Regional Director of Region 14 and the Union a status report of the bargaining session. That status report shall include (1) the participants, (2) the start and stop times of bargaining, (3) a list of proposals exchanged between the Union and Noah's Ark, (4) a summary of what was discussed about each proposal, (5) a list of any tentative agreements reached, and (6) any information requests made during the bargaining session.
5. On or before Tuesday, November 12, 2019, Noah's Ark shall post clear and legible copies of this order in English and Spanish at its facility in all places where notices to employees are normally posted, and shall keep those postings free from any obstruction or defacement for the duration of the Court's preliminary injunction ([filing 21](#)). All bargaining unit employees shall have free and unrestricted access to those postings.
6. On or before Friday, November 8, 2019, Noah's Ark shall provide copies of this order to each of its officers and obtain signed acceptance of those copies from each officer. On or before Friday, November 15, 2019, Noah's Ark shall submit the originals of those acceptances to the Acting Regional Director of Region 14.

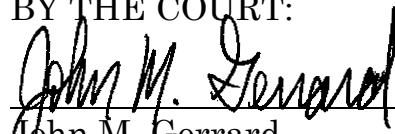
7. On or before Tuesday, November 12, 2019, Noah's Ark shall mail, first class postage paid, clear and legible copies of this order in English and Spanish to all bargaining unit employees employed by Noah's Ark on or after May 10, 2019, at their last known home addresses.
8. On or before Friday, November 15, 2019, Noah's Ark shall serve upon the Acting Regional Director of Region 14, and file with the Court, an affidavit or declaration under penalty of perjury from a responsible officer of Noah's Ark setting forth with specificity the manner in which Noah's Ark has complied with each of the terms of this order.

IT IS ORDERED:

1. Noah's Ark shall comply with the terms of this order.
2. Compliance with the terms of this order shall purge Noah's Ark of its existing contempt.
3. Any further violation of the ongoing commands of the Court's May 10 order ([filing 21](#)) may be addressed and remedied on subsequent motion.
4. The Clerk of the Court shall set a status report deadline for November 15, 2019.

Dated this 1st day of November, 2019.

BY THE COURT:

  
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John M. Gerrard  
Chief United States District Judge